UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

JAMES HAMMOND,

Petitioner,

ORDER:

(1) DENYING REQUEST FOR EXTENSION OF TIME; AND

UNKNOWN,

(2) DISMISSING CASE WITHOUT PREJUDICE

Petitioner, a state prisoner proceeding pro se, has submitted a document in which he requests an extension of time to file a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

FAILURE TO FILE PETITION

Petitioner has not filed a Petition for writ of habeas corpus in this action. Therefore, unless Petitioner is a capital prisoner, he has not initiated habeas proceedings in this Court. Calderon (Nicolaus) v. United States District Court, 98 F.3d 1102, 1107 n. 3 (9th Cir. 1996) ("Unlike non-capital prisoner who initiate habeas proceedings by filing a petition for a writ of habeas corpus, capital prisoners commence federal habeas proceedings by filing a request for appointment of counsel."); McFarland v. Scott, 512 U.S. 849 (1994).

Petitioner does not contend that he is a capital prisoner, that is, a prisoner under sentence of death, and there is nothing in the documents he has submitted which indicates that he is a capital prisoner. Because it is clear from the face of that Petition that Petitioner is not a capital prisoner, the instant action must be dismissed. Petitioner's request for an extension of time is denied without prejudice. The Clerk shall close the file. IT IS SO ORDERED. DATED: February 8, 2008 Janes J. Sammatino onorable Janis L. Sammartino